

## **REG-35-107 PROCEEDINGS INITIATED BY THE NEBRASKA DEPARTMENT OF REVENUE**

107.01 The Nebraska Department of Revenue may initiate a proceeding against a person who has failed to comply with the provisions of Chapter 9.

107.01A Whenever the holder of a license or permit under Chapter 9 fails to comply with any provisions of Chapter 9 or with any rule or regulation of the Nebraska Department of Revenue with regard to Chapter 9, the Nebraska Department of Revenue may suspend, cancel, or revoke for cause all rights and privileges granted to a licenseholder or permitholder under Chapter 9.

107.01B Order of suspension.

107.01B(1) The State Tax Commissioner may enter an order of suspension to licenseholder or permitholder if the Department determines that such licenseholder or permitholder is in noncompliance with Chapter 9. The suspension takes effect fifteen (15) days after the notice is mailed. No such suspension shall be issued prior to hearing before the State Tax Commissioner to any nonprofit organization licensed to conduct a lottery by the sale of pickle cards pursuant to section 9-326 of the Nebraska Pickle Card Lottery Act.

107.01B(2) The order of suspension must be in writing and be sent by certified mail, return receipt requested.

107.01B(3) The licensee may file a written petition with the Nebraska Department of Revenue within fifteen (15) days from the mailing date of the order of suspension requesting reconsideration of such suspension. At such redetermination hearing, the licensee may present evidence that the violations for which the suspension has been imposed have been corrected and that the licensee is currently in compliance with the law. Upon such showing, the State Tax Commissioner may lift such a suspension.

107.01B(4) The content of the petition shall be similar to that found in Reg-35-103.01A.

107.01B(5) A hearing for suspension of the license or permit shall be held within twenty (20) days of the date the suspension takes effect whether or not a licensee files a petition for reconsideration of the suspension. A request by the licensee or permitholder to hold the hearing after the end of the twenty (20) day period shall extend the suspension up to the time of hearing.

107.01B(6) The Department shall serve notice upon the licensee or permitholder by certified mail, return receipt requested, of the time, date, and place of a hearing at least ten (10) days before the hearing is to be held.

107.01C Suspension, cancellation or revocation of a license or permit authorized under Chapter 9.

107.01C(1) Cause for suspension, cancellation, or revocation. Cause shall

generally mean any noncompliance with the provisions of Chapter 9 or any regulation adopted pursuant to Chapter 9 and shall also include but not be limited to:

107.01C(1)(a) Knowingly causing, aiding, abetting, or conspiring with another to cause any person to violate any of the provisions of Chapter 9 or any rules or regulations promulgated pursuant to Chapter 9.

107.01C(1)(b) Obtaining a license or permit or attempting to obtain a license or permit under Chapter 9 by fraud, misrepresentation, or concealment.

107.01C(1)(c) Having been convicted of or forfeited bond upon a charge of, or having plead guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or filings to a governmental agency at any level, or filing false reports with any such agency, or any similar offense or offenses or any crime, whether a felony or a misdemeanor, involving any gambling activity or involving moral turpitude.

107.01C(1)(d) Denying the Department or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity under Chapter 9 is conducted or failing to produce for inspection or audit any book, record, document, or item required to be produced by law or Department rule or regulation.

107.01C(1)(e) Making a misrepresentation of or failing to disclose material facts to the Department when required by law or requested by the Department.

107.01C(1)(f) Nonpayment of any taxes and additions to taxes, including penalties and interest, required under Chapter 9 or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967, as amended.

107.01C(2) Notice of a suspension, cancellation, or revocation proceeding shall be served upon the licensee or permitholder by certified mail, return receipt requested, at least ten (10) days prior to the proceeding. Such notice shall inform the licensee of the time, date and place of hearing.

107.01C(3) The State Tax Commissioner must render a decision within twenty (20) days after the date of the hearing.

107.02 The State Tax Commissioner may enter a cease and desist order to a licenseholder or permitholder under the Nebraska Pickle Card Lottery Act or Nebraska Bingo Act if the Department determines that a practice or practices engaged in by the licenseholder or permitholder are not in compliance with the Acts. Such order shall take effect upon issuance by the State Tax Commissioner.

107.02A Such cease and desist orders shall be in writing and served upon the licenseholder or permitholder by certified mail, return receipt requested.

107.02B Such cease and desist orders shall contain:

107.02B(1) A statement of the violations of the Acts constituting the reasons for the entry of such an order;

107.02B(2) A statement of the practice or practices engaged in by the licenseholder or permitholder which are to be discontinued;

107.02B(3) A statement of the rights of the licenseholder or permitholder to request a hearing for review of the cease and desist order entered by the State Tax Commissioner.

107.02C The licenseholder or permitholder receiving a cease and desist order may request a hearing before the State Tax Commissioner, in writing, requesting reconsideration of such order.

107.02D A hearing for reconsideration of a cease and desist order shall be held no later than seven (7) days after such request is received by the State Tax Commissioner. Such hearings shall be conducted in accordance with the procedures set forth in these Practice and Procedure Regulations.

107.02E Within twenty (20) days of hearing, the State Tax Commissioner shall issue an order containing findings of facts and conclusions of law and vacating the order or making it permanent as the facts require. Such order shall be served upon the licenseholder or permitholder by certified mail, return receipt requested.

107.02F The licenseholder or permitholder receiving a cease and desist order shall be deemed to be in default if he or she fails to appear at hearing and the allegations contained in the order shall be deemed to be true.

107.02G A cease and desist order issued to a licenseholder or permitholder shall not affect the validity of the license or permit held by the licenseholder or permitholder and shall only affect the practice or practices alleged to be in violation of the Nebraska Bingo Act and Nebraska Pickle Card Lottery Act.

107.03 The Department of Revenue may institute proceedings to levy administrative fines against a licenseholder or permitholder under the Nebraska Pickle Card Lottery Act for violations of the Act. Such hearings shall be held in accordance with the provisions for notice and the conduct of administrative hearings contained in these practice and procedure regulations.

107.03A Administrative fines imposed by the State Tax Commissioner may be up to \$1,000.00 per violation of the Nebraska Pickle Card Lottery Act. Each violation on the part of the licenseholder or permitholder may be the subject of such a fine. In imposing such administrative fines, the State Tax Commissioner shall take the following factors into account:

107.03A(1) The severity of the violation; and

107.03A(2) The financial gain derived by the licenseholder or permitholder as a result of the violation.

107.03B Any administrative fines imposed under the Nebraska Pickle Card Lottery Act and these regulations shall be subject to all collection measures available to the Nebraska Department of Revenue on behalf of the state of Nebraska.

107.04 The administrative remedies set out in section 35-107 of these regulations are not exclusive and may be imposed in combination as the result of a single proceeding. For example, a cease and desist order may also be accompanied by a proceeding to levy an administrative fine.

107.05 Collection of delinquent taxes from a responsible corporate officer or employee. The Nebraska Department of Revenue may collect delinquent bingo, lottery by the sale of pickle card, lottery or raffle, or county or city lottery taxes from any corporate officer or employee who is required to collect, truthfully account for, or pay over any tax imposed under Chapter 9 and who willfully fails to do so. The imposition of personal liability for delinquent taxes directly upon any responsible corporate officer or employee enables the Nebraska Department of Revenue to reach those primarily responsible for the corporation's failure to remit taxes which are due and owing to the state of Nebraska. A written notice and demand for payment must be made to the responsible corporate officer or employee by certified mail, return receipt requested, requesting payment of the taxes within sixty (60) days. Any corporate officer or employee seeking to challenge the Nebraska Department of Revenue's determination as to his or her personal liability for the corporation's delinquent taxes must:

107.05A Pay the full amount of the notice or pay a specified minimum amount as indicated in the letter and post a bond for the remainder.

107.05B File a claim for refund of the amount so paid in accordance with the refund procedures set out in Reg-35-104 within sixty (60) days of the demand for payment.

107.05C If the preceding requirements are satisfied, the Nebraska Department of Revenue will abate collection proceedings pending the outcome of the refund claim. However, if the Nebraska Department of Revenue determines that further delay in collection of the delinquent taxes from the responsible corporate officer or employee will jeopardize collection proceedings, nothing in this regulation will prevent the immediate collection of the taxes.

(Sections 9-239, 9-240, 9-418, 9-419, 9-420, 9-421, 9-429, 9-610, 9-612, 77-369, 77-2713(7), and 84-909, R.R.S. 1943. Sections 9-226, 9-227, 9-228, 9-229, 9-322, 9-323, 9-324, 9-325, and 9-344, R.S.Supp., 1988. January 3, 1990.)